

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2007-402-C – ORDER NO. 2008-273
APRIL 17, 2008

IN RE: Application of HTC Communications, LLC for) ORDER DESIGNATING
Designation as an Eligible) HTC COMMUNICATIONS,
Telecommunications Carrier Pursuant to) LLC AS AN ELIGIBLE
Section 241(e)(2) of the Communications Act) TELECOMMUNICATIONS
of 1934) CARRIER

This matter is before the Public Service Commission of South Carolina (“the Commission”) on the Application of HTC Communications, LLC (“HTCC”) for designation as an eligible telecommunications carrier (“ETC”) under 47 U.S.C. § 214(e)(2). HTCC filed its Application on November 8, 2007.

The South Carolina Office of Regulatory Staff (“ORS”) was a party to this proceeding pursuant to statute. No other entities intervened or appeared in this docket. The public hearing was held at the Commission offices on February 28, 2008, with the Honorable G. O’Neal Hamilton, Chairman, presiding. At the hearing, Jeremy C. Hodges, Esquire, represented HTCC. C. Lessie Hammonds, Esquire, represented ORS.

By this Application, HTCC seeks authorization to receive support from the federal Universal Service Fund (“USF”) for use within HTCC’s licensed service territory in South Carolina. The Telecommunications Act of 1934 provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive

federal universal service support.¹ Pursuant to 47 U.S.C. § 214(e)(2), this Commission has jurisdiction to designate a competitive carrier as an ETC.

Requirements for Designation

The Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of § 214(e)(1).² Before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.³

An ETC petition must contain the following: (1) a demonstration of the petitioner's capability and commitment to offer all services that are supported by the USF; (2) a demonstration of the petitioner's capability and commitment to offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services;" (3) a description of how the petitioner will "advertise the availability of the [supported services] and the charges therefore using media of general distribution;" and (4) a detailed description of the geographic area for which it requires an ETC designation from the Commission.⁴

¹ 47 U.S.C. § 254(e).

² 47 U.S.C. § 214(e)(2).

³ *Id.*

⁴ 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201.

DISCUSSION

HTCC's Capability and Commitment to Offer All Services Supported By the USF

HTCC has demonstrated through its Application and related submissions to the Commission that it now offers, or will offer upon designation as an ETC, all of the services supported by the USF. As noted in its petition and in the direct, pre-filed testimony of Mr. Larry Spainhour, HTCC currently provides, or is committed to providing, all of the services and functionalities required by the Federal Communications Commission ("FCC")⁵ throughout its designated service area in South Carolina. As set forth in the Settlement Agreement with ORS, HTCC is also committed to making the federal Lifeline and Link-Up programs available to qualifying low-income consumers in accordance with the Commission's proposed regulation 103.690.1. Through this commitment, HTCC will advertise the availability of and initiate outreach programs to promote the availability of Lifeline and Link-Up programs within its designated service area.

HTCC has also committed to comply with FCC rules that have been adopted by this Commission governing ETC designations.⁶ These commitments include: (1) adherence to the CTIA Consumer Code for Wireless Service; (2) annual reporting of unfulfilled service requests and complaints per 1,000 handsets; (3) demonstration of ability to remain functional in emergencies and annual reporting of network outages; (4) specific commitments to provide service to requesting customers in its designated service

⁵ See 47 C.F.R. § 54.101; HTCC Application at pp. 7 - 10

⁶ See 47 C.F.R. § 54.202, 54.209; See also Commission Order 2007-424.

area; and (5) specific commitments to improve its existing network with the use of high-cost support.

HTCC has also committed to develop and offer a wireless service plan that includes unlimited local calling in a manner and price that is the same as what is offered by the incumbent LEC in its designated service area.⁷

Offering the Supported Services Using HTCC's Own Facilities

ETC applicants are required to demonstrate that they offer the supported services using either their own facilities or a combination of their own facilities and resale of another carrier's services.⁸ HTCC has demonstrated that it satisfies this requirement.⁹

HTCC has also committed to offering its services to customers making reasonable requests for such in accordance with the process set forth by the FCC and the proposed regulations of this Commission.¹⁰

Advertisement of the Availability of the Supported Services

HTCC has committed to advertise the availability of the services supported by the federal USF and their applicable charges using media of general distribution within its designated service territory.¹¹ These advertisements will be made in the same manner as the incumbent local exchange carriers and designed to disclose to all potential customers the services available to them, and the applicable charges for those services, including Lifeline and Link-Up programs for qualifying low-income individuals.

⁷ See Settlement Agreement between ORS and HTCC, dated Feb. 15, 2008.

⁸ 47 U.S.C. § 214(e)(1)(A).

⁹ Affidavit of Curley P. Huggins, p. 2, ¶ 11, at exhibit A to HTCC Application; *See also* Transcript at p 30:14-31:10.

¹⁰ See 47 C.F.R. § 54.202(a)(1)(a); *See also* proposed R.103.690(a)(1)(A)(2); HTCC Application, pp. 3-4.

¹¹ HTCC Application, p. 11; *See* 47 U.S.C. § 214(e)(1)(B).

Public Interest Analysis

In evaluating HTCC's Application, the Commission must determine whether the requested designation is in the public interest.¹² The ETC applicant bears the burden of establishing that the public interest is served by its requested designation.¹³ In areas served by a non-rural telephone company, the Commission is required to designate an additional ETC that meets the applicable requirements of that designation, consistent with the public interest, convenience, and necessity.¹⁴ We conclude that it is in the public interest to designate HTCC as an ETC for the portions of its requested service area that are served by the non-rural telephone company, Verizon South, as listed in the Revised Exhibit B to HTCC's Application.

In areas served by a rural telephone company, the Commission must determine whether the public interest would be served by granting the requested designation.¹⁵ An analysis of the public interest requires consideration of the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering.¹⁶ When an ETC applicant seeks designation below the study area of (i.e., in less than the full study area of) a rural telephone company, a creamskimming analysis is required to compare the population densities of the wire centers where the applicant seeks designation with the population densities of the wire centers located in the portions of the study area where the applicant does not seek designation.¹⁷

¹² 47 U.S.C. § 214(e)(2).

¹³ See *ETC Report and Order*, 20 FCC Rcd. At 6392-95, paras. 48-53.

¹⁴ 47 U.S.C. § 214(e)(2).

¹⁵ *Id.*

¹⁶ See 47 C.F.R. § 54.202(c); *ETC Report and Order*, 20 FCC Rcd. At 6392-95, paras. 48-53.

¹⁷ See *Id.*

HTCC's Application does not implicate any creamskimming concerns. HTCC has requested designation in the entire study area of its affiliate rural telephone company, Horry Telephone Cooperative.¹⁸ Further, we conclude that HTCC has satisfied the burden of proof in establishing that its universal service offering in the requested areas will provide benefits to rural and non-rural customers, and that therefore, it is consistent with the public interest, convenience, and necessity to designate HTCC as an ETC in these requested service areas.

We find that HTCC's universal service offering will provide a variety of benefits to customers in its service area, including increased customer choice and new service offerings. Additionally, designation will enable HTCC to construct new facilities to improve quality of service and extend service to users in underserved and un-served rural areas. HTCC's two year plan reveals that HTCC will construct facilities in the vicinity of communities whose per capita income are well below the state average. Designation will also promote increased competition among wireline and wireless carriers that will create additional incentives for providers to increase their operating efficiency and introduce new service offerings, increased quality and value to their customers.¹⁹

HTCC has demonstrated that there are areas of its service territory where its existing network provides limited or no coverage at all, even when currently planned additions to its network are taken into account. We find that HTCC's network improvement plan includes the addition of numerous new cell sites that will significantly

¹⁸ HTCC Application, pp. 11 – 12.

¹⁹ HTCC Application, p. 12.

improve and expand the existing coverage of its network, particularly in rural areas of its service territory.²⁰

We accept HTCC's commitment to use all available support as required by applicable law and regulations. We also find that HTCC's initial two-year network improvement plan is sufficient to support a grant of this petition. We note that HTCC has also agreed not to utilize any universal service funds for the provision of broadband type services.²¹ We also accept the unopposed testimony that HTCC will invest all of the support it receives on eligible projects as required by the Commission.²²

We find that HTCC's designation will promote affordable telephone service with the calling plan it will develop and offer that includes local calling in a manner and price that is the same as the incumbent LEC in the service area where it requests designation.²³ HTCC has also made detailed commitments to provide high-quality service throughout the proposed area in which it seeks designation.²⁴ Given HTCC's commitment to comply with the CTIA Consumer Code for Wireless Service, and its commitment to comply with the rules and regulations of the FCC and this Commission, we find that HTCC has made commitments to service quality that will benefit the public in HTCC's proposed service area and assist the Commission in evaluating that service quality on a continuing basis. Because we have the ability to review HTCC's performance each year, we will be able to ensure that South Carolina's rural citizens realize the benefits that HTCC has promised and that Congress intended to deliver when it authorized competitive carriers.

²⁰ Tr. at p.48:24-49:6.

²¹ See Settlement Agreement, at ¶ 7.

²² Tr. at p.48:11-23.

²³ See Settlement Agreement at ¶ 8.

²⁴ See generally, HTCC Application.

As set forth herein, we find that the designation as an ETC in the rural study area of Horry Telephone Cooperative and the non-rural study area of Verizon South within HTCC's licensed service area, identified in HTCC's Application, is in the public interest. Specific wire center codes for these study areas were provided to the Commission and are found at Revised Exhibit B to HTCC's Application.

Because HTCC requests ETC status in the entire study area of the rural telephone company, Horry Telephone Cooperative, we are not concerned about the potential for creamskimming.²⁵

IT IS, THEREFORE, ORDERED THAT:

1. HTCC is designated as an ETC, as of the effective date of this Order, in the requested areas served by the non-rural telephone company, Verizon South, Inc., as listed in Revised Exhibit B to HTCC's Application.
2. HTCC is designated as an ETC, as of the effective date of this Order, in the entire study area served by the rural telephone company, Horry Telephone Cooperative, as listed in Revised Exhibit B to HTCC's Application.
3. HTCC shall abide by the FCC's ETC designation rules set forth at 47 C.F.R. § 54.202 and 209, consistent with Commission Order No. 2007-424.
4. HTCC shall abide by its commitment to provide service through its ETC designated service area to all customers making a reasonable request for service, including low-income customers.

²⁵ *ETC Report and Order*, 20 FCC Rcd. at 6392, -95, para. 49 ("When a competitive carrier requests ETC designation for an entire rural service area, it does not create creamskimming concerns because the affected ETC is required to serve all wire centers in the designated service area.")

5 All federal USF funding received as a result of this Order will be used to support the expansion and improvement of services throughout HTCC's service territory and provide Lifeline and Link-Up credits for low income customers as required by the FCC and this Commission.

6 Upon filing this Order, the Commission will file a certification with the FCC and the Universal Service Administrative Company "within 60 days of the effective date" of this Order, as required by 47 C.F.R. § 54.313 and 314, stating that HTCC will use high-cost support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intend."

7. Should the Commission determine that HTCC has not honored its commitments and plans as set forth before the Commission, or has failed to follow the applicable statutes, rules, or regulations, the Commission may deny HTCC's annual recertification as an ETC.

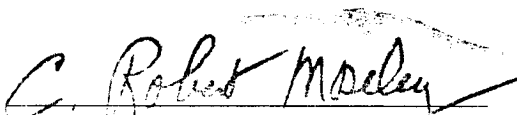
8. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



G. O'Neal Hamilton, Chairman

ATTEST:


C. Robert Moseley, Vice Chairman

(SEAL)